

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 10-29-04.

The IRO reviewed therapeutic activities, manual therapy technique, office visits, gait training, and electrical stimulation-unattended rendered from 12-15-03 through 03-26-04 that were denied based upon "V".

The IRO determined that services in dispute from 02-25-04 through 03-26-04 **were** medically necessary. The IRO determined that services in dispute from 12-15-03 through 01-02-04 **were not** medically necessary.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the **majority** of issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 12-07-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

Review of CPT code 97750 (7 DOS) 10-13-03, 10-27-03, 11-10-03, 11-24-03, 12-08-03, 12-22-03 and 01-05-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs. Reimbursement is recommended per the Medicare Fee Schedule effective 08-01-03. Reimbursement for the 10-13-03 through 12-22-03 is recommended in the amount of **\$221.64** ($\$29.55 \times 125\% = \$36.94 \times 6 \text{ DOS}$). Reimbursement for DOS 01-05-04 is recommended in the amount of **\$37.00**. The MAR for the 2004 service is \$37.05 ($\$29.64 \times 125\%$). The requestor however only billed \$37.00.

Review of CPT code 95851 (7 DOS) 10-14-03, 10-28-03, 11-11-03, 11-25-03, 12-10-03, 12-24-03 and 01-05-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs. Reimbursement is recommended per the Medicare Fee Schedule effective 08-01-03. The MAR

for the 2003 services is \$36.78 (\$28.62 X 125%). The requestor billed \$36.00 for each date of service in dispute. Reimbursement is recommended in the amount of **\$216.00** (\$36.00 X 6 DOS). Reimbursement for date of service 01-05-04 is recommended in the amount of **\$26.40** (\$21.12 X 125%).

CPT code G0283 (2 units) date of service 02-23-04 denied with denial code "F" (fee Guideline MAR reduction). The carrier has made a payment of \$14.41. Per Rule 134.202(b) reimbursement is recommended per the Medicare Fee Schedule effective 08-01-03. Additional reimbursement in the amount of **\$14.41** (\$11.53 X 125%= \$14.41 X 2 units) is recommended.

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the Medicare program reimbursement methodologies effective August 1, 2003 per Commission Rule 134.202(c), plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Decision is applicable for dates of service 10-13-03 through 03-26-04 in this dispute.

This Findings and Decision and Order are hereby issued this 26th day of January 2005.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

DLH/dlh

Enclosure: IRO Decision



7600 Chevy Chase, Suite 400
Austin, Texas 78752
Phone: (512) 371-8100
Fax: (800) 580-3123

NOTICE OF INDEPENDENT REVIEW DECISION

Date: January 4, 2005

To The Attention Of:

TWCC
7551 Metro Center Drive, Suite 100, MS-48
Austin TX 78744-16091

RE: Injured Worker:

MDR Tracking #: M5-05-0703-01
IRO Certificate #: 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- Usual notification of IRO assignment, disputed dates of service and IRO documentation
- Letter of 12/16/04 from Dr. Tollenaar, D.C. It should be noted that Dr. Allen was the actual treating physician
- Employee's request to change treating doctors form dated 10/10/03 and 9/14/04 as well as 9/27/04
- MRI report dated 10/30/03
- Electrodiagnostic report dated 10/28/03 which mainly revealed a sensory dysfunction
- Multiple follow up notes from Dr. Payne, D.O. dated 11/6/03, 12/22/03, 2/9/04, 3/2/04, 4/12/04, 5/17/04, 6/22/04
- Second opinion consultation report from Dr. Cunningham dated 8/4/04
- Surgical operative note dated 1/14/04 from Dr. Payne who performed an L4/5 discectomy as well as bilateral L4/5 laminotomies and bilateral L5 foraminotomies
- Prescription for physical therapy dated 2/13/04 from Dr. Payne
- Extension of physical therapy prescription dated 3/10/04 for at least 4 additional weeks with the possibility of a work hardening program after that

Submitted by Respondent:

- Usual IRO documentation including the disputed dates of service
- There appeared to be a notification of 11/9/04 regarding the receipt of an MDR request from TWCC
- Peer review report of 9/21/04 from Dr. Canard, D.C.
- Peer review report of 11/26/03 from Dr. Canard
- Change of treating physician report dated 10/10/03

Clinical History

According to the documentation provided for review, the claimant sustained low back pain after lifting a 200 pound piece of concrete, by himself, on _____. The claimant underwent some initial therapy; however, changed treating physicians to Dr. Allen sometime in October 2003. There was some dispute regarding exactly when Dr. Allen was approved to begin treating the claimant. The claimant underwent some initial chiropractic care on a daily basis and continued to have difficulties. For this reason an MRI was performed on 10/30/03 which showed a fairly significant disc protrusion at the L5/S1 level with a bulge at the L4/5 level. A needle EMG/NCV was performed on 10/29/03 and this reportedly showed only dermatomal losses which would be loss of sensation mainly. The claimant was referred to Dr. Payne for neurosurgical opinion. An epidural steroid injection was recommended and performed; however, the date of this injection was never documented in the documentation that was provided to me for consideration. The injection likely occurred sometime in either late November 2003 or early December 2003. The claimant saw Dr. Payne again on 12/22/03 and it was reported that the epidural steroid injection gave him about 2 weeks of relief; however, Dr. Payne felt that surgery would be needed and the claimant underwent surgery on 1/14/04. On 2/9/04 the claimant was released for some post operative therapy. By 4/12/04 the claimant was starting to have increased symptoms along with right sided radicular leg pain. By 8/4/04 the claimant saw Dr. Cunningham for a second opinion and Dr. Cunningham felt that the claimant would need a discectomy at the L5/S1 level because he had a recurrent disc herniation at that level.

Requested Service(s)

CPT Codes 97530, therapeutic activities; 97140, manual therapy technique; 99213, office visit; 97116, gait training; G0283, electrical stimulation, unattended for dates of service 12/15/03, 12/17/03, 12/19/03, 12/22/03, 12/24/03, 12/26/03, 12/29/03, 1/2/04, 2/25/04, 2/27/04, 3/1/04, 3/3/04, 3/5/04, 3/8/04, 3/10/04, 3/12/04, 3/15/04, 3/17/04, 3/19/04, 3/24/04 and 3/26/04.

Decision

I agree with the carrier and find that some of the services in dispute were not medically necessary and these included dates of services that are in dispute from 12/15/03 through 1/2/04. I disagree with the carrier and find that the services rendered from 2/25/04 through 3/26/04 were medically necessary. Any and all other services were either not part of the dispute or were denied with a different code.

Rationale/Basis for Decision

This file contains mixed issues. As of a 12/22/03 follow up with Dr. Payne, surgery was being recommended so it is highly doubtful and not within medical probability that the chiropractic services rendered in December 2003 that are part of this dispute were medically necessary and this would also include the 1/2/04 date of service. By that time the claimant had more than a sufficient trial of chiropractic care and was not doing well. Again, surgery was recommended as of 12/22/03 and, therefore, further chiropractic care would not be indicated. The claimant indeed underwent surgery on 1/14/04 and as of 2/9/04 Dr. Payne, the claimant's treating surgeon, recommended the usual amount of post operative physical therapy and continued to recommend

physical therapy through March 2004 because the claimant was slowly improving. It is for this reason that the chiropractic services rendered during this timeframe, specifically from 2/25/04 through 3/26/04, would be considered medically necessary and appropriate especially because the highly evidence based Official Disability Guidelines do include recommendations for appropriate post operative rehabilitation. As of April 2004, which is of course beyond the disputed dates of service, the claimant began to worsen, therefore, the services rendered from 2/25/04 through 3/26/04 would be considered medically necessary as the claimant was reportedly showing progress and a reasonable amount of post operative rehabilitation would be considered well within the well respected evidence based treatment guidelines.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 4th day of January 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder